

## **EXHIBIT A**

### **Agreement**

**Asset Purchase Agreement**

**by and between**

**~~RFC Capital~~ Textron Financial Corporation**

**and**

**New Access Communications LLC**

Entered into and effective July \_\_, 2003  
for the sale and purchase of Assets and Accounts Receivable

## Asset Purchase Agreement

This Asset Purchase Agreement (this "Agreement") is entered into and effective as of this July \_\_, 2003, by and among ~~RFC Capital~~ Textron Financial Corporation, a Delaware corporation, as successor to RFC Capital Corporation ("Seller"), and New Access Communications LLC, a Minnesota limited liability company (the "Buyer").

### WITNESSETH:

**WHEREAS**, CCC Globalcom Corporation and Cierra Network Systems, Inc. ("Companies") were engaged in the business of providing competitive local exchange, intra and interlata, international long distance telephone service, prepaid local and long distance services and other telecommunications related services to residential and business customers (the "Business"); and

**WHEREAS**, the Companies or their predecessors are indebted to Seller in an amount of approximately ~~\$14 million dollars~~ 14,000,000 and such indebtedness is in default and has been accelerated by Seller; and

**WHEREAS**, the Seller ~~shall intend to foreclose upon the Business assets of the Companies under the terms of a letter of intent for voluntary foreclosure agreement on a consensual basis~~ with the Companies; and

**WHEREAS**, the Seller desires to sell, and the Buyer desires to purchase all of the assets used in connection with or that constitute the Business ~~that have been foreclosed upon by the Seller pursuant to a private disposition of collateral under the Uniform Commercial Code.~~

**NOW, THEREFORE**, the parties hereto hereby agree to the above recitations and as follows:

## Section 1

### Purchase and Sale of Assets

1.1 Purchase and Sale. Subject to all the terms and conditions of this Agreement, and for the consideration herein stated, on the Closing Date, the Seller agrees to foreclose upon, sell, convey, assign and transfer to the Buyer by virtue of a private disposition of collateral pursuant to Article 9 of the Uniform Commercial Code (the "UCC Foreclosure"), and the Buyer agrees to purchase and accept from the Seller, all of the Companies' rights, title and interest in and to the assets, properties and rights described below (the "Sale Assets"), with such covenants, representations and warranties, agreements and ~~indemnifies~~indemnities as are set forth in this Agreement, free and clear of all liens, ~~claims of Seller and encumbrances of any kind whatsoever~~any liens or security interests subordinate to those of Seller, including specifically any tax liens of any kind. The Sale Assets shall include all of the Seller's Companies' right, title and interest in and to:

(a) ~~(a)~~ all of the existing residential and business customers of any type or kind that constitute the Business of the Companies and all contractual or other rights of the Companies with respect to the Business (including any and all carrier access revenue relating to such customers), all of which will be foreclosed upon by Seller ~~prior to in order to effectuate the sale hereunder as of~~ the Closing Date, but specifically excluding any customer deposits or prepayments made to the Companies;

(b) any and all equipment and software ~~necessary used to~~ run the Business as of the Closing Date, ~~all of which has been foreclosed upon by Seller;~~

(c) all accounts receivable of any type or kind (whether billed or unbilled and whether or not charged off by the Companies) relating to the Business, excluding any negative accounts receivable balances, ~~all of which has been foreclosed upon by Seller;~~ and

(d) ~~(d)~~ all the names, addresses and other pertinent information for all of Companies customer lists, if any, (together with the right to solicit, service and bill said customers), customer agreements, customer billing and collection data and customer billing history since inception of each customer account with the Companies or any predecessor to the Companies in electronic format, manuals, forms, computer programs, business plans or like data relating to the Business or the conduct thereof and relating to the accounts receivable, whether existing or created as of the date of this Agreement or as of the Closing Date, ~~all of which have been foreclosed upon the the Seller;~~ and

(e) all cash and cash equivalents, proceeds of every nature, attributable to the operation of the Sale Assets collected after the Closing Date.

~~(e) — all cash and cash equivalents, proceeds of every nature, attributable to the operation of the Sale Assets collected after the Closing Date, all of which have been foreclosed upon by the Seller.~~

The Companies or the Seller shall collect and remit to Buyer weekly any checks, money orders or any other forms of payment with respect to the Sale Assets that are sent by the customers in error to the Companies' or the Seller's addresses and deliver them to the Buyer by overnight mail to the contact person designated by Buyer for up to a year after the Closing Date.

The parties acknowledge that the Sale Assets are subject to fluctuation, but that the Seller shall from the date of execution of this Agreement use its best efforts to require the Companies to continue to operate the Business in the normal and ordinary course of the Companies' business acting in good faith utilizing the same degree and skill with respect to the Sale Assets as is reasonable and customary in the industry from the date of signing of the related Wholesale Services Agreement ("Wholesale Agreement") between the Companies and the parties to this Agreement until the Closing Date in accordance with the terms of this Agreement.

The Buyer hereby grants the Seller, for a period of one year after the Closing Date, the right to access and copy, at reasonable times after reasonable notice, any business records transferred to Buyer which the Seller determine is necessary to prepare financial statements, prepare tax returns or otherwise support representations to Legal Authority (as defined in Section 3.2 below), or to defend against, or participate in, any actual or pending lawsuit or administrative actions against Seller or the Companies.

1.2 Excluded Assets. All assets of the Companies not listed in Sections 1.1 or otherwise described in this Agreement will not be transferred to Buyer by the Seller pursuant to this Agreement (the "Excluded Assets").

1.3 No Liabilities. The Buyer is not assuming any liabilities of the Companies or Seller in this transaction; other than the portion of the Companies' debt obligations to Seller constituting the Purchase Price hereunder.

## Section 2

### Purchase Price

#### 2.1 Purchase Price.

As full consideration for the Sale Assets the Buyer agrees to pay the sum of Three Million Dollars \$3,000,000 (the "Purchase Price") "Purchase Price", by virtue of the assumption of \$3,000,000 of the Companies' debt obligations to Seller (the "Assumed Debt"), on terms and conditions satisfactory to Seller and Buyer.

2.2 Allocation of Purchase Price. The Buyer, acting in good faith, within one (1) month following the Closing Date, shall allocate the Purchase Price among the Sale Assets in the manner it determines and shall report such allocation to the Seller in writing.

### Section 3

#### Representations and Warranties of the Buyer

The Buyer represents and warrants to the Seller as follows:

3.1 Authorization and Enforceability. The Buyer is a Minnesota limited liability company, is legally qualified to do business in such jurisdictions as are necessary to conduct its business, and has all requisite power and authority (corporate or otherwise) to own, lease and operate its properties and to carry on its business as now conducted. The Buyer has taken all action necessary to authorize the execution, delivery and performance of this Agreement and all other agreements and instruments reasonably necessary to complete the transactions contemplated by this Agreement and has full power and authority to enter into this Agreement and such other agreements and instruments and carry out the terms hereof and thereof on the Closing Date. The Buyer has duly executed and delivered this Agreement and this Agreement is the valid and binding obligation of the Buyer enforceable in accordance with its terms.

3.2 Compliance. The execution, delivery and performance of this Agreement by the Buyer, the compliance by the Buyer with the provisions of this Agreement and the consummation of the transactions contemplated by this Agreement will not conflict with or result in the breach of any of the terms or provisions of or constitute a default under:

- (a) the articles of organization or bylaws of the Buyer;
- (b) any note, indenture, mortgage or deed of trust or loan agreement to which the Buyer is a party or by which the Buyer is bound; or
- (c) any material statute or any order, rule or regulation or any decision of any federal, state, local or foreign court or regulatory authority or administrative or arbitral body, agency or tribunal, or any other governmental body whatsoever ("Legal Authority") applicable to the Buyer.

3.3 Consents. The Buyer has obtained, or shall have obtained prior to the Closing Date, all material consents, authorizations or approvals of any third parties required to be obtained in connection with the execution, delivery and performance of this Agreement. The Buyer has made, or will have made prior to the Closing Date, all material registrations or filings required for the execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated hereby if any are required. **[The Seller specifically consents to this transaction under the terms and conditions of its existing Amended and Restated Loan Agreement with the Buyer.]** [Subject to internal Textron approval ??]

3.4 Brokers. The Seller has no obligation to pay any fees or commissions to any broker, finder, agent or other intermediary in connection with the negotiation or consummation of the transactions contemplated hereby as a result of any action or agreement of the Buyer.

3.5 Legal Proceedings. There are no claims, actions, suits, inquiries, investigations or proceedings before any Legal Authority pending or, to the Buyer's knowledge, threatened against the Buyer relating to the transactions contemplated hereby or relating to the Sale Assets.

#### Section 4

##### Representations and Warranties of the Seller

The Seller represents and warrants to the Buyer as follows:

4.1 Authorization and Enforcement. The Seller is duly organized and validly existing under the laws of the state of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on the Business after the voluntary surrender and foreclosure upon complete the UCC Foreclosure with respect to the Sale Assets from the Companies. The Seller has full power and authority to perform this Agreement and to execute and deliver the documents and instruments contemplated by this Agreement (the "Seller's Documents"). The Seller has duly executed and delivered this Agreement and will at the Closing Date deliver the Seller's Documents. The Seller's Documents as delivered at the Closing Date will be valid and binding obligations of the Seller's enforceable in accordance with their terms.

4.2 Compliance. The execution, delivery and performance of this Agreement and the Seller's Documents by the Seller, the compliance by the Seller with the provisions of this Agreement and the Seller's Documents, and the consummation of the transactions contemplated by this Agreement and the Seller's Documents will not conflict with or result in the breach of any of the terms or provisions of or constitute a default under:

(a) the certificate of incorporation or bylaws of the Seller;

(b) any note, indenture, mortgage, deed of trust, loan to which the Seller is a party or by which the Seller is bound; or

(c) any material statute or any order, rule or regulation or any decision of any Legal Authority applicable to the Seller.

4.3 Consents. No consent, authorization or approval of any third-party is required to be obtained in connection with the Seller's execution, delivery and performance of this Agreement and the Seller's Documents.

4.4 Brokers. The Buyer has no obligation to pay any fees or commissions to any broker, finder, agent or other intermediary in connection with the negotiation or consummation of the transactions contemplated hereby as a result of any action or agreement of the Seller.

~~4.5 Litigation. There are no material claims, actions, suits, inquiries, investigations or proceedings before any Legal Authority pending against the Seller, or the Sale Assets that may adversely affect the transactions contemplated hereby or the value of the Sale Assets. To the best of Seller's knowledge after due inquiry, there are no material claims, actions, suits, inquiries, investigations or proceedings before any Legal Authority pending against the Companies that may adversely affect the transactions contemplated hereby or the value of the Sale Assets; LOA's. To the best of Seller's knowledge, there are no material claims, actions, suits, inquiries, investigations or proceedings before any Legal Authority pending against the Companies that may adversely affect the transactions contemplated hereby or the value of the Sale Assets.~~ To the best of Seller's knowledge after due inquiry, the Companies have delivered to Buyer true and complete originals or where originals are not available, executed copies of all customer agreements for the Business, including (Letters of Authorization) LOA's in written or electronic form and all business records in its possession with respect to the Sale Assets.

~~4.6 No Liens. The Sale Assets are not encumbered or otherwise pledged leaving the Sale Assets free and clear of any liens or any claims of any sort as of the Closing Date. The Sale Assets are specifically not subject to any tax liens or claims of any kind as of the Closing Date.~~

~~4.7 No Undisclosed Encumbrances or Liabilities Affecting the Sale Assets. No facts or circumstances exist, and Seller is not aware of after reasonable due diligence, of any liabilities or obligations of the Companies (whether accrued, contingent, absolute, determined, determinable or otherwise of any nature whatsoever) which, after the passage of time, could reasonably be expected to result in any claims against, or material obligations or liabilities of the Companies relating to or that are or shall become a lien upon the Sale Assets or affecting the Sale Assets.~~

~~4.8 Bone Fide Accounts Receivable. To the best of Seller's knowledge after due inquiry, all the accounts receivable are bone fide accounts of the Companies for local, long distance or other telecommunications or related services or fees, which excludes negative account balances and tax obligations, and all billings to customers are true and correct and have been billed in conformity with the terms and conditions of the Companies' tariffs and/or customer agreements in force at the time of such billings with respect to the telecommunications customers of the Companies and are not subject to any offset or setoff by the customers.~~

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~~4.9 Valid Title. Seller represents and warrants that as of the Closing Date that the Seller shall have good title to all of the Sale Assets which it will convey to the Buyer on the Closing Date.~~

~~4.10 Due Diligence Records True and Accurate. Seller represents and warrants that the due diligence records relied upon by Buyer in establishing the Purchase Price for the Sale Assets is materially true and accurate and that Buyer may rely upon the accuracy of such information.~~

~~4.11 No Material Misstatement. Seller represents and warrants that there is no material misstatement in any of the due diligence records relied upon by the Buyer in establishing the Purchase Price for the Sale Assets.~~



4.7 ~~4.12~~ No Change in Representations and Warranties. Seller shall represent and warrant on the Closing Date that there have been no changes in the representations and warranties from the date of this Agreement until the Closing Date that would have a material adverse effect upon the transaction.

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## Section 5

### Covenants

5.1 Access to Sale Assets. ~~Prior~~ Seller will use its best efforts to cause the Closing Date, the Seller shall obtain adequate assurances from the Companies in the Seller's voluntary foreclosure agreement that the Companies will Companies to continue to afford to the Buyer and its authorized representatives access to the Companies offices for the purpose of preparing for the transfer of the Sale Assets on the Closing Date. Seller agrees to use its best efforts to require the Companies to cooperate and provide all requested information to Buyer to allow Buyer to complete the terms of this Agreement by the Closing Date.

### 5.2 Preservation of Sale Assets.

(a) Except as otherwise required by law or expressly permitted by this Agreement, the Seller agrees that it shall not, and it will use reasonable efforts to ~~insure~~ ensure that the Companies do not, after the date of the Wholesale Agreement and until the Closing Date:

(i) dispose of, or agree to dispose of, any of the Sale Assets or lease or license, or agree so to lease or license, any of the Sale Assets and shall take all reasonable actions to preserve the value of the Sale Assets;

(ii) ~~allow the Companies to cancel, fail to maintain in force or change any policy of insurance relating to the Sale Assets or any policy or bond providing substantially the same coverage unless such cancellation or change is effective only after the Closing Date;~~ and Seller shall use its best efforts to cause the Companies to provide within seven (7) days of the execution of this Agreement a Certificate of Insurance delivered to the Buyer which describes all insurance coverage in effect at least until August 4, 2003, or any additional dates for which such insurance has been prepaid;

(iii) ~~allow the Companies to waive, release, grant or transfer any rights of value or modify or change any existing license, lease, contract or other agreement or arrangement affecting the Sale Assets ; or~~

(iv) ~~allow the Companies to discontinue any regulatory approval or other licenses required for the continued operation of the Business with respect to the Sale Assets until the date of foreclosure upon the Sale Assets by the Seller and resale by Seller of the Sale Assets to Buyer; Closing Date; or~~

(v) ~~allow the Companies to fail to pay any and all federal, state or local taxes or regulatory fees or charges of any kind which the Companies may owe with respect to the Sale Assets; or~~

~~(v)~~ ~~(vi)~~ — allow the Companies to forgive or otherwise compromise any of the Sale Assets from the date of the foreclosure upon the Sale Assets hereof until the Closing Date.

(b) Except as otherwise required by law or expressly permitted by this Agreement, Seller and Buyer shall after the date of execution of the Wholesale Agreement and until the Closing Date:

(i) use reasonable efforts to maintain the value of all of the Sale Assets and the related telecommunications customers, consistent with reasonable industry practices; and

(ii) use their best efforts to cause the Companies to operate the Business on a going-concern basis and in the ordinary course of their business.

5.3 ~~5.3~~ Remedies for Breach by the Seller. In the event of a violation or breach of this Agreement by the Seller, the Buyer may obtain specific enforcement of this Agreement and shall have every other damage or other remedy available to it at law or equity.

~~5.4 Non-Competition.~~ For a period of three (3) years following the Closing Date Seller will not directly or indirectly, either as principal, agent, employee, employer, stockholder, co-partner or in any other individual or representative capacity whatsoever, solicit, call on, take away, divert or assist any person in so soliciting, diverting, calling on, or taking away any customers of Buyer, and not seek to employ any temporary independent contractors that are being used by the Buyer from the date of this Agreement until the Closing Date. The covenants contained herein shall be construed and interpreted in any judicial proceeding to permit its enforcement to the maximum extent. Seller agrees that the restraint imposed is necessary for the reasonable and proper protection of Buyer and its affiliates, and that said restraint is reasonable in terms of subject matter, duration, and geographic scope. It is understood by the parties that these restrictive covenants are an essential element of this Agreement and that, but for such covenant, Buyer would not have entered into this Agreement. Without intending in any way to limit the remedies available to Buyer, Seller understands and agrees that damages at law may be an insufficient remedy to Buyer if Seller breach this covenant not to compete and that Buyer may seek injunctive relief in any court of competent jurisdiction to restrain the breach or the threatened breach of or otherwise specifically to enforce the covenants contained in this Section 5.4. The provisions of this covenant shall in no way prohibit the Seller from engaging in the commercial finance business or foreclosing upon any other assets in the telecommunications business in the future. Seller shall also cause the Companies to provide this same Non-Competition covenant on the Closing Date.

~~5.5 Quiet Enjoyment of Sale Assets.~~ Seller shall defend the quiet enjoyment and ownership of the Sale Assets for Buyer against any third party claim of ownership and Seller shall indemnify Buyer from any and all liabilities, obligations, losses, damages, penalties, costs and expenses of any kind or nature that are asserted against the Buyer or the Indemnified Parties

(as such term is defined in Section 6.1 hereof) that arise from third party claims to ownership or title to the Sale Assets.

~~5.4~~ 5.6—No Solicitation. From the execution of this Agreement until the earlier of the Closing Date or termination of this Agreement by the parties and except as may be required under the applicable provisions of the Uniform Commercial Code, Seller shall not disclose or otherwise discuss a transaction for the sale of the Sale Assets with any other third party.

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## Section 6

### Section 6

#### Indemnification of Buyer by the Seller

The Seller undertakes the following duties to defend and indemnify the Buyer and other parties defined below for the following matters:

~~6.1~~ 6.1—Tax and Regulatory Indemnity by Seller. Seller shall indemnify and hold Buyer and its governors, officers, managers, employees, members, affiliates and agents (the “Indemnified Parties”) harmless from and against, and shall pay to the Indemnified Parties within ten (10) days after Seller’s receipt of written demand from the Indemnified Parties, any and all liabilities, obligations, losses, damages, penalties, costs and expenses of any kind or nature that are asserted against the Indemnified Parties or the Sale Assets as a result of any excise, sales, payroll, use or other type of tax or regulatory fee of any kind assessed by, unpaid or due from the Companies (or their predecessors) whatsoever, solely with respect to the Companies’ operations prior to Closing Date, by any federal, state, local or other taxing authority, governmental or quasi-governmental authority (“Company Tax Liabilities”).

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Seller shall also defend, indemnify and hold harmless the Indemnified Parties against any regulatory claims, liabilities, obligations, losses, damages, charges, fines, penalties or costs and expenses of any kind or nature (“Company Regulatory Liabilities”) that are asserted against the Indemnified Parties or the Sale Assets for the regulatory actions or inactions of the Companies or any of their subsidiaries with respect to the Sale Assets or this Agreement, but only with respect to actions or inactions taken or occurring prior to the date of execution of the Wholesale Agreement. Seller shall also defend, indemnify and hold harmless the Indemnified Parties for all actions taken by Buyer under the Wholesale Services Agreement with the Companies relating to Company Tax Liabilities ~~or Company Regulatory Liabilities~~.

If Seller does not pay any indemnity amount due under this Agreement, Buyer shall have the additional right to set off such amount against any loan due by Buyer under the Buyers term loan or revolving loan agreements between the parties after the Indemnified Parties have provided Seller ~~[fifteen (15)]~~ days advance notice of such obligation in writing, and Seller has not paid the item presented by the Indemnified Parties.

~~6.2~~ 6.2—Bankruptcy Preferential Transfer and Litigation Indemnity by Seller.

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If any of the Companies file bankruptcy during the time from the Closing Date of this Agreement until one (1) year after the Closing Date, and: (i) any loan amount for the Purchase Price advanced to Buyer by Seller is altered, amended or voided by order of the bankruptcy court pursuant to its bankruptcy court powers or other equitable powers (whether by reason of invalidity, fraud, set aside, a determination that the Asset Purchase Agreement or the Seller's voluntary foreclosure is void or voidable as a preference or diversion of assets of the Companies), or (ii) Buyer is required to make any payments of amounts that Buyer has collected and received relating to collected customer proceeds or accounts receivable proceeds relating to the Sale Assets to the Companies' bankruptcy estate by order of the bankruptcy court, then Seller shall defend and indemnify the Indemnified Parties in respect to such modification or voiding of the Asset Purchase Agreement or the Seller's voluntary foreclosure agreement with the Companies and until such time as there is a final nonappealable bankruptcy or other court order affirming the amount of the loan amount relating to the Purchase Price, RFC shall reduce the loan amount due from Buyer under its Loan Agreement, as amended, with Buyer in the amount of the reduction ordered by the bankruptcy court or in the full amount of the Purchase Price if the bankruptcy court voids either the Asset Purchase Agreement or the voluntary foreclosure agreement for any reason and Seller shall also pay to Buyer such amounts of customer collections or accounts receivable collections made to Buyer that are ordered by the bankruptcy court to be paid by Buyer to the Companies' bankruptcy estate. Upon payment by Seller of any such customer account collections or accounts receivable UCC Foreclosure. Upon reimbursement of Buyer by Seller for any amounts paid over to the Companies' estate in bankruptcy by Buyer, Buyer shall assign any bankruptcy claim right, title and interest to recover such payments from it to the Seller.

~~The Seller agrees to defend and indemnify the Indemnified Parties from and against any litigation or arbitration claims, counterclaims, crossclaims, liabilities, obligations, losses, damages, penalties, costs and expenses of any kind or nature that are asserted by any third party or creditor, vendor or shareholder of the Companies' against the Indemnified Parties or the Sale Assets relating to this Asset Purchase Agreement or the voluntary foreclosure agreement and related transaction documents.~~

6.3 ——— 6.3 Breach of Representations or Warranties or Other Agreements. The Seller shall defend and indemnify the Indemnified Parties against any breach of any of Seller's representations and warranties, covenants, or other agreements under the terms of this Agreement.

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## Section 7

### Section 8~~Section 7~~

#### Conditions to Obligations of the Buyer

The obligations of the Buyer under Sections 1 and 2 of this Agreement are subject to satisfaction, at or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived in writing by the Buyer:

8.1 ~~7.1~~ — Representations, Warranties and Covenants. All representations and warranties, covenants and other agreements of the Seller made in this Agreement and the Seller's Documents shall in all material respects be true and correct on and as of the Closing Date with the same force and effect as if made as of that date. All of the terms, covenants, conditions and agreements set forth in this Agreement and the Seller's Documents to be complied with and performed by the Seller at or prior to the Closing Date shall in all material respects have been complied with or performed thereby.

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~~7.2~~ — ~~Seller's Authorization~~. ~~Seller shall deliver due proof and authorization of the execution, delivery and performance of this Agreement by the Board of Directors of the Seller to Buyer at the Closing Date.~~

8.2 ~~7.3~~ — Approvals. All material authorizations, consents and approvals of any Legal Authority and third parties required to be obtained by Seller in order to permit consummation of the transactions contemplated by this Agreement by Seller, if any, shall have been obtained and be reasonably satisfactory in form and content to the Buyer.

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8.3 ~~7.4~~ — Financing. Buyer shall have obtained financing from Seller in an amount acceptable to Buyer to finance this transaction and Buyer shall execute an assumption agreement in form and substance satisfactory to Seller and Buyer with respect to the Companies' debt being assumed.

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8.4 ~~7.5~~ — ~~Voluntary Foreclosure Agreement~~ Cooperation Term Sheet. Seller shall deliver a copy of the ~~Voluntary Foreclosure Agreement~~ Cooperation Term Sheet between the Companies and Seller with respect to the Sale Assets ~~and all partial or full lien releases filed against the Companies by the Seller regarding the Sale Assets shall be released by the Seller.~~

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8.5 ~~7.6~~ — Assignment Right of Buyer to Third Party. Buyer shall retain the right at or before the Closing Date to designate in writing to the Seller that certain of the Sale Assets shall be assigned to a third party acceptable to Seller if the Buyer has not been able to obtain the necessary approvals for transfer of such customer accounts in the relevant jurisdictions on or prior to the Closing Date. Under such circumstances and subject to approval by Seller, the Seller will sign an Asset Purchase Agreement for the assets with the third party and the Seller shall deliver to the third party the documents set forth in Section 9.2 on such closing date with respect to the third party buyer.

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~~8.6~~ ~~7.7~~ Noncompetition Agreement. Seller shall use its best efforts to cause the Companies to deliver a Noncompetition Agreement in the form of the attached Schedule 7.7 to the Buyer on the Closing Date.

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~~Section 8~~

Section 9

#### Conditions to Obligations of the Seller

The obligations of the Seller under Sections 1 and 2 of this Agreement are subject to satisfaction, at or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived in writing by the Seller:

~~9.1~~ ~~8.1~~ Representations, Warranties and Covenants. All representations and warranties and covenants of the Buyer made in this Agreement shall in all material respects be true and correct on and as of the Closing Date with the same force and effect as if made on and as of that date. All of the terms, covenants, conditions and agreements to be complied with and performed by the Buyer on or prior to the Closing Date shall in all material respects have been complied with or performed thereby.

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~~Section 9~~

Section 10

#### Termination

~~10.1~~ ~~9.1~~ Right of Parties to Terminate. This Agreement may be terminated:

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(a) by the Buyer, if the Seller shall have breached any of its material obligations hereunder or under the Wholesale Agreement or if the Buyer is unable to obtain satisfactory consents or approvals to consummate the transaction; or

(b) by the Seller, if the Buyer shall have breached any of its material obligations hereunder; or

~~10.2~~ ~~9.2~~ Effect of Termination. If either the Buyer or the Seller terminates this Agreement pursuant to Section 8.1, such party shall promptly give written notice thereof to the other party to this Agreement. Any such termination shall be subject to any right of damages or specific performance as provided in this Agreement or as otherwise provided by applicable law or equity.

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## Section 11

### Section 10

#### Closing Date

11.1 ~~10.1~~ Time and Place of Closing. The closing of the transactions contemplated by this Agreement (the "Closing Date") shall take place at the offices of Buyer, 801 Nicollet Mall, Suite 350, Minneapolis, Minnesota 55402, unless the parties agree to another location in writing, on such date as designated in writing by the Buyer, but not later than November 3, 2003 (the "Closing Date").

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11.2 ~~10.2~~ Obligations of the Seller at Closing. On the Closing Date, the Seller shall deliver or cause to be delivered to the Buyer the following documents and take the other actions identified :

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(a) an assignment and a foreclosure bill of sale, conveying all of the Sale Assets to the Buyer in the form attached as **Schedule 9.2(a)** hereof;

(b) a closing certificate, pursuant to which the Seller represents and warrants to the Buyer that the representations and warranties, covenants and other agreements made by Seller to the Buyer in this Agreement are true and correct in all material respects as of the Closing Date as if then originally made and that all covenants required by the terms hereof to be performed by the Seller on or before the Closing Date, to the extent not waived by the Buyer in writing, have been so performed in all material respects; (c) all other documents and instruments as may be reasonably necessary and required to consummate the transactions contemplated by this Agreement approving and authorizing this Agreement and the transactions contemplated thereby.

11.3 ~~10.3~~ Obligations of the Buyer at Closing. On the Closing Date, the Buyer shall deliver or cause to be delivered the following documents, and take the other actions identified below:

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(a) a closing certificate pursuant to which the Buyer represents and warrants and covenants to the Seller that the Buyer's representations and warranties and covenants to the Seller are true and correct in all material respects as of the Closing Date, and that all covenants required by the terms hereof to be performed by the Buyer on or before the Closing Date, to the extent not waived by the Seller in writing, have been so performed in all material respects;

(b) an assumption agreement in form and substance satisfactory to Seller and Buyer with respect to the Assumed Debt; and

(b~~c~~) all other documents and instruments as may be reasonably necessary and required to consummate the transactions contemplated by this Agreement.

### Section 11

## Section 12

### Survival

All representations, warranties, covenants and agreements made in this Agreement or in any exhibit, schedule, or certificate or agreement delivered in accordance with this Agreement shall survive the execution and delivery of this Agreement, but only those covenants contained in Sections 5 and 6 hereof shall survive beyond the Closing Date.

### Section 12

### Section 13

### Other Provisions

13.1 12.1—Further Assurances. After the Closing Date, each of the parties will take such actions and execute and deliver to the other party such further documents, instruments of assignment, conveyances and transfers as, in the reasonable opinion of counsel to the requesting party, may be necessary (a) to ensure, complete and evidence the full and effective transfer of the Sale Assets to the Buyer from the Seller pursuant to this Agreement; (b) to notify all necessary LEC's that the ANI's are to be transferred from the Companies to the Buyer; and (c) to fully and completely consummate the transactions and agreements contemplated by this Agreement.

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13.2 12.2—Books and Records. On or prior to the Closing Date, the Buyer shall obtain and maintain all business records, books of account, files, invoices, and other materials relating to the Sale Assets of the Companies prior, whether in paper or electronic form.

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13.3 12.3—Benefit and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

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13.4 12.4—Amendment, Waiver. The provisions of this Agreement may be amended or waived only by an instrument in writing signed by the party against which enforcement of such amendment or waiver is sought. Any waiver of any term or condition of this Agreement or any breach hereof shall not operate as a waiver of any other such term, condition or breach, and no failure to enforce any provision hereof shall operate as a waiver of such provision or of any other provision hereof.

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13.5 12.5—Governing Law, Jurisdiction. **THE CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA. THE DISTRICT COURT FOR HENNEPIN COUNTY, MINNESOTA SHALL HAVE EXCLUSIVE JURISDICTION WITH REGARD TO ALL MATTERS RELATING TO THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT.**

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13.6 12.6—Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement (a) shall be in writing; (b) shall be delivered personally, including by means of facsimile, overnight express delivery, or mailed by registered or certified

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mail, postage prepaid and return receipt requested; (c) shall be deemed given on the date of personal delivery or on the date set forth on the return receipt; and (d) shall be delivered or mailed to the addresses or facsimile numbers set forth below or to such other address as any party may from time to time direct in writing in accordance with this section (telephone numbers are provided to assist in coordination, but telephone conversations do not constitute notice):

(i) If to the Buyer:

Greg Wilmes, President  
New Access Communications LLC  
801 Nicollet Mall, Suite 350  
Minneapolis, MN 55402  
Telephone: (612) 359-0118  
Facsimile: (612) 359-0160

(ii) If to the Seller:

Steven Jaffe Jaffee  
Senior Vice President  
RFC Capital Corporation  
130 Chestnut Street, Suite 400  
Columbus, Ohio 43215  
(614) 229-7979  
Fax (614) 229-7980

With a copy to:

Eric Anderson  
Parker, Hudson, Reiner Rainer, Dobbs LLP  
1500 Marquis Two Tower  
285 Peachtree Center Avenue NE  
Atlanta, GA 30303  
(404) 420-4331  
Fax (404) 522-8409

IN WITNESS WHEREOF, the parties have executed this Asset Purchase Agreement as of the day and year first written above.

**BUYER:**

**NEW ACCESS COMMUNICATIONS LLC**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

**RFC CAPITAL CORPORATION**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULES**

### **Schedule 1.1**

Schedule of Foreclosure Sale Assets Purchased

See Exhibit A to the Bill of Sale of Seller

## Schedule 7.7

### NONCOMPETITION AGREEMENT OF COMPANIES

1. Non-Competition. For a period of three (3) years following the Closing Date of the sale of the Sale Assets to New Access Communications LLC (New Access) by RFC Capital Corporation (RFC) as described in the Asset Purchase Agreement dated July \_\_, 2003 (Asset Purchase Agreement), neither CCC Globalcom Corporation, a Nevada corporation, nor Ciera Network Systems, Inc, a Texas corporation (Companies), or any of each of their officers, directors, employees, agents or successors will directly or indirectly, either as principal, agent, employee, employer, stockholder, co-partner or in any other individual or representative capacity whatsoever, solicit, call on, take away, divert or assist any person in so soliciting, diverting, calling on, or taking away any customers of New Access or any of its affiliates, and not seek to employ any temporary independent contractors that are being used by New Access from the date of the Asset Purchase Agreement between New Access and RFC until the Closing Date of such Agreement. The covenants contained herein shall be construed and interpreted in any judicial proceeding to permit its enforcement to the maximum extent. The Companies agree that the restraint imposed is necessary for the reasonable and proper protection of New Access and its affiliates, and that said restraint is reasonable in terms of subject matter, duration, and geographic scope. It is understood by the Companies that New Access would not have entered into the Asset Purchase Agreement without this covenant not to compete by the Companies. Without intending in any way to limit the remedies available to New Access, the Companies understand and agree that damages at law may be an insufficient remedy to New Access if the Companies breach this covenant not to compete and that New Access may seek injunctive relief in any court of competent jurisdiction to restrain the breach or the threatened breach of or otherwise specifically to enforce the covenants contained in this Agreement. The Companies acknowledge that they have received valuable consideration for this agreement in the form of debt forgiveness by RFC under the terms of the Voluntary Foreclosure Agreement between RFC and the Companies.

#### 2. Miscellaneous.

(a) Benefit and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

(b) Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the obligation not to compete by the Companies and supersedes any and all prior agreements, arrangements and understandings relating to matters provided for in this Agreement.

(c) Amendment, Waiver. The provisions of this Agreement may be amended or waived only by an instrument in writing signed by the party against which enforcement of such amendment or waiver is sought. Any waiver of any term or condition of this Agreement or any breach hereof shall not operate as a waiver of any other such term, condition or breach, and no failure to enforce any provision hereof shall operate as a waiver of such provision or of any other provision hereof.

(d) Governing Law, Jurisdiction. **THE CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA. THE DISTRICT COURT FOR HENNEPIN COUNTY, MINNESOTA SHALL HAVE EXCLUSIVE JURISDICTION WITH REGARD TO ALL MATTERS RELATING TO THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT.**

(e) Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement (i) shall be in writing; (ii) shall be delivered personally, including by means of facsimile, overnight express delivery, or mailed by registered or certified mail, postage prepaid and return receipt requested; (iii) shall be deemed given on the date of personal delivery or on the date set forth on the return receipt; and (iv) shall be delivered or mailed to the addresses or facsimile numbers set forth below or to such other address as any party may from time to time direct in writing in accordance with this section (telephone numbers are provided to assist in coordination, but telephone conversations do not constitute notice):

(iii) If to New Access:

Greg Wilmes, President  
New Access Communications LLC  
801 Nicollet Mall, Suite 350  
Minneapolis, MN 55402  
Telephone: (612) 359-0118  
Facsimile: (612) 359-0160

(iv) If to the Companies:

~~Paul Licata~~ Paul Licata  
President  
CCC Globalcom Corporation  
1250 Wood Brance Park Drive, 6th Floor  
Houston, Texas  
(614) 229-7979  
Fax (614) 229-7980

IN WITNESS WHEREOF, the parties have executed this Noncompetition Agreement as of the day and year first written above.

**BUYER:**

**NEW ACCESS COMMUNICATIONS LLC**

By:  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COMPANIES:**

**CCC GLOBALCOM CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CIERA NETWORK SYSTEMS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule 9.2(a)**

**Bill of Sale of Seller.**

**[UNDER REVIEW / REVISION] - [RFC Capital Corporation, a Delaware corporation, ("Seller") hereby transfers, sells and assigns all of the accounts receivable and all of the Sale Assets as defined in the Asset Purchase Agreement between the Seller and New Access Communications LLC ("Buyer") as Buyer under the pursuant to the terms of the Asset Purchase Agreement between Seller and Buyer effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2003. Such sale is subject to all of the representations, warranties, covenants and indemnifies made by the Seller with respect to the Sale Assets. A general description of the Sale Assets is attached to this Bill of Sale as Exhibit A and includes all of the assets set forth in the Voluntary Foreclosure Agreement between RFC Capital Corporation and CCC Globalcom Corporation and Ciera Network Systems, Inc.]**

**SELLER:**

**RFC CAPITAL CORPORATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**BILL OF SALE**

**LISTING OF ALL SALE ASSETS**

All of the assets of Seller described in Section 1 of this Agreement unless excluded on Schedule 1.1(b) or in Section 1.2 of this Agreement.

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